

## 1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **Powell County (CONTRACTOR)** enter into this Contract (**05-008-CSD**). The parties names, addresses, telephone numbers, and Federal Employee Identification Number (Contractor only) is as follows:

Montana Department of Corrections  
Centralized Services Division  
1539 11<sup>th</sup> Avenue  
PO Box 201301  
Helena MT 59620-1301  
(406) 444-3930

**RECEIVED**  
**FEB 16 2005**  
**ACCOUNTING**  
**DEPT. OF CORRECTIONS**

*Powell County*  
*409 Missouri Avenue*  
*Deer Lodge MT 59722*  
*(406) 846-3680*  
*FEI# 81-6001412*

### 1.1 PURPOSE

The purpose of this agreement is to compensate the Powell County Attorney to provide prosecution services for trials of persons who commit offenses under the provisions of 45-7-306 (Escape) and offenses committed by inmates, staff, or visitors at the Montana State Prison (MSP). This Contract is made pursuant to 53-30-110, MCA.

**DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:**

## 2. DUTIES/RESPONSIBILITIES OF THE CONTRACTOR

CONTRACTOR, through the Powell County Attorney, agrees to prosecute escapes tried under 45-7-306 and offenses committed by inmates, staff, or visitors at MSP and shall also conduct any inquests required by law. CONTRACTOR shall submit monthly invoices for services provided under this Contract after the District Judge has approved the invoice. Invoices shall include:

1. The offender's name.
2. Date(s) of service.
3. Crime charged.
4. Description of service provided.
5. Number of attorney hours (calculated by tenths) for each case - including total hours for the month billed.
6. Number of administrative support hours (calculated by tenths) for each case - including total hours for the month billed.
7. Costs of prosecution (i.e. expert witness fees, transcription and reporters fees, etc.).

## 3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for delivery of services, provided pursuant to Section 2, in the following manner:

- A. DEPARTMENT shall pay CONTRACTOR **\$60.00** (sixty and 00/100 dollars) **per hour for attorney time** and **\$10.00** (ten and 00/100 dollars) **per hour for administrative support time**, not to exceed \$8,994.00 (eight thousand nine hundred and ninety four and 00/100 dollars) during any Fiscal Year that this Contract is in effect. In the event that CONTRACTOR determines that the charges for services rendered under this agreement will exceed this amount in any Fiscal Year, CONTRACTOR shall so notify DEPARTMENT and the parties shall agree to the

continued performance of this agreement at the rates and on the conditions established herein. DEPARTMENT acknowledges that CONTRACTOR may not be at liberty to stop providing legal services in ongoing cases and that CONTRACTOR should be paid for all work completed under the terms of this agreement

- B. CONTRACTOR shall not be compensated for travel time [or expenses] incurred while traveling to and from MSP. However, DEPARTMENT will reimburse CONTRACTOR for necessary travel outside of Powell County in the performance of duties required by this agreement. Compensation for travel will be paid in accordance with the applicable State rates for lodging, meals, and mileage.
- C. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.
- D. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

#### **4. AGENCY ASSISTANCE**

DEPARTMENT shall provide CONTRACTOR with appropriate space at MSP to consult with inmates and staff, as needed, and to perform the functions required by this agreement. CONTRACTOR shall also be given access to all records at the facility or in the control of the DEPARTMENT including, but not limited to, inmate and employee records of any kind, including employment, personnel, medical, and psychological records kept or maintained by the DEPARTMENT, its subsidiaries, and contractors.

However, the parties recognize that services provided to DEPARTMENT occur within the confines of a secure correctional facility, necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space, and telephone service (e.g., Montana State Prison does not allow wireless phones within facility).

#### **5. TIME OF PERFORMANCE**

This Contract shall take effect upon receipt of final contract signature and shall terminate on June 30, 2006, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of five (5) additional years.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

#### **6. LIAISONS AND NOTICE**

- A. Diana Koch, Chief Legal Counsel, 1539 11<sup>th</sup> Avenue, Helena MT 59620 or successor serves as DEPARTMENT'S liaison.
- B. Christopher G. Miller, Powell County Attorney, 409 Missouri Avenue, Deer Lodge MT 59722 or successor serves as CONTRACTOR'S liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal

Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

**7. OWNERSHIP AND PUBLICATION OF MATERIALS**

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be criminal justice information and shall be disseminated only in accordance with the provisions of Section 44-5-101 et. seq. MCA.

**8. HOLD HARMLESS AND INDEMNIFICATION**

CONTRACTOR agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of CONTRACTOR and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**9. PUBLIC INFORMATION**

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

**10. AMENDMENTS**

All amendments to this Contract shall be in writing and signed by the parties.

**11. COMPLIANCE WITH LAWS**

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

**12. TERMINATION AND DEFAULT**

- A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written

notice to the other, which notice will establish a termination date not less than 120 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.

**13. CHOICE OF LAW AND VENUE**

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

**14. ARBITRATION**

Any Claim arising out of, or related to, this Contract shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

**15. INTEGRATION**

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

**16. SEVERABILITY**

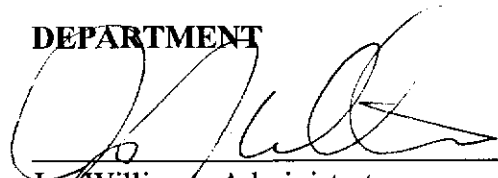
A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

**17. COMPLETED CONTRACT**

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Fiscal Bureau, PO Box 201301, 1539 11<sup>th</sup> Avenue, Helena, MT 59620-1301.


**SIGNATURE**

**DEPARTMENT**

  
\_\_\_\_\_  
Joe Williams, Administrator  
Centralized Services Division

1/12/05  
Date

**CONTRACTOR**

  
\_\_\_\_\_  
Christopher G. Miller, Powell County Attorney

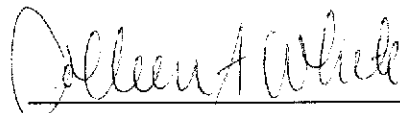
2-14-05  
Date

Dwight A O'Hara 2/14/05  
Name Date  
Powell County Commissioner

 2/14/05  
Name Date  
Powell County Commissioner

 2/14/05  
Name Date  
Powell County Commissioner

Approved for Legal Content by:

 1/12/05  
Legal Counsel Date  
Department of Corrections

**CONTRACT AMENDMENT**  
**CONTRACT #05-008-CSD**

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **Powell County** (CONTRACTOR) 409 Missouri Avenue, Deer Lodge, MT 59722 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of February 14, 2005 and Section 15 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2006 and Section 5 provides that the parties may extend the expiration date of the Contract.

NOW THEREFORE, the parties agree to amend the Contract as follows (**new language underlined, old language interlined**):

**3. COMPENSATION/BILLING**

DEPARTMENT shall compensate CONTRACTOR for delivery of services, provided pursuant to Section 2, in the following manner:

- A. DEPARTMENT shall pay CONTRACTOR **\$60.00** (sixty and 00/100 dollars) **per hour for attorney time** and ~~\$10.00 (ten and 00/100 dollars)~~ **\$11.32** (eleven and 32/100 dollars) **per hour for administrative support time**, not to exceed \$8,994.00 (eight thousand nine hundred and ninety four and 00/100 dollars) during any Fiscal Year that this Contract is in effect. In the event that CONTRACTOR determines that the charges for services rendered under this agreement will exceed this amount in any Fiscal Year, CONTRACTOR shall so notify DEPARTMENT and the parties shall agree to the continued performance of this agreement at the rates and on the conditions established herein. DEPARTMENT acknowledges that CONTRACTOR may not be at liberty to stop providing legal services in ongoing cases and that CONTRACTOR should be paid for all work completed under the terms of this agreement

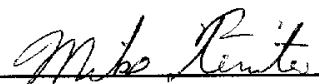
**5. TIME OF PERFORMANCE**

This Contract shall take effect upon receipt of final contract signature and shall terminate on June 30, ~~2006~~ **2008**, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of ~~five (5)~~ **three (3)** additional years.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

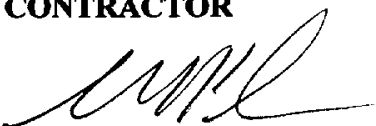
This constitutes the Amendment to the Contract. All other provisions contained in the original Contract, as amended, shall remain unchanged.

## DEPARTMENT

  
Mike Ferriter, Director  
Department of Corrections

12-18-06  
Date

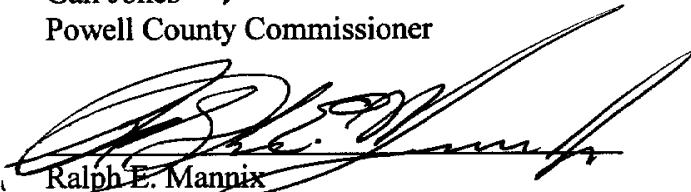
## CONTRACTOR

  
Lewis Smith, County Attorney  
Powell County

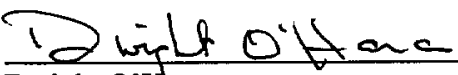
1-18-07  
Date

  
Gail Jones  
Powell County Commissioner

1/30/07  
Date

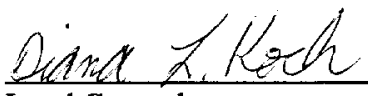
  
Ralph E. Mannix  
Powell County Commissioner

1/30/07  
Date

  
Dwight O'Hara  
Powell County Commissioner

1/30/07  
Date

Reviewed for Legal Content by:

  
Legal Counsel  
Department of Corrections

12/15/06  
Date